

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LAVINIA GOUDEAUX**

**RESPONDENT,**

**v.**

**BOARD OF POLICE  
COMMISSIONERS OF KANSAS  
CITY, MISSOURI AND DAMON  
HAWLEY**

**APPELLANTS.**

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DOCKET NUMBER WD75770

DATE: September 10, 2013

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Appeal From:

Jackson County Circuit Court  
The Honorable David M. Byrn, Judge

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Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

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Attorneys:

Thomas R. Davis, Kansas City, MO, for respondent.

P. Benjamin Cox, Kansas City, MO, for appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**v.**

**BOARD OF POLICE  
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No. WD75770

Jackson County

Before Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Kansas City Police Officer Damon Hawley and the Board of Police Commissioners of Kansas City, Missouri appeal from a personal injury judgment in favor of Lavinia Goudeaux following a jury trial. Appellants argue that the trial court erred in denying their motion for remittitur, judgment notwithstanding the verdict, or new trial because (1) the jury should have been instructed on negligence instead of negligence *per se*; and in the alternative, (2) the jury's verdict exceeded the amount of damages requested by Goudeaux during closing argument.

**Affirmed.**

(1) The trial court did not commit error in instructing the jury on negligence *per se*. There was sufficient evidence from which the jury could find that Officer Hawley violated section 304.016.4.

(2) Section 304.016.4 is not limited in its scope to the act of passing, or to a requirement that vehicles are traveling in the same direction.

(3) Officer Hawley's claim that his act of driving in the left lane within 100 feet of an intersection was excusable does not negate the presumption of negligence as to affect the ability to submit on the theory of negligence *per se*. Rather, evidence suggesting a lawful excuse or justification may permit the submission of an affirmative defense. Officer Hawley did not request that the jury be instructed on an affirmative defense of excuse.

(4) Goudeaux's closing argument about an award that would "serve justice" was not a clear, unqualified, or unequivocal judicial admission that Goudeaux should be awarded no more than the referenced sum.

Opinion by Cynthia L. Martin, Judge

September 10, 2013

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